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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 218 21

JAMES MONROE ET AL.,

Petitioners,

vs.

FRANK PAPE ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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JAMES MONROE ET AL.,

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

The respondents oppose the petition for certiorari on the following grounds:

I.

The mere fact that the federal courts of appeals have come to different conclusions on cases brought under the Civil Rights Act is no reason for granting certiorari in this case. Such differences are due to different factual situations and not to a conflict in principle of law.

Petitioners under "Questions Presented" (Petition, p. 2) set forth four propositions for this court's consideration.

These have to do with whether their complaint sets forth a cause of action under the Civil Rights Act and whether a municipal corporation is liable for the actions of its police officers under such act.

Petitioners under "Reasons for Granting the Writ" (Petition, pp. 6-11) do not discuss the four propositions set forth under "Questions Presented" but argue that a conflict in the decisions of the federal courts of appeals requires this court to grant certiorari.

Petitioners cite many cases without giving any facts or showing in any way that any substantial conflict exists in the courts below but they insist that this court compare the various decisions to determine such fact.

It is not the function of this court to find grounds for granting certiorari. This burden is on petitioners.

Petitioners assert that the court below has rendered conflicting opinions (Petition, p. 8). They ask that *Geach* v. *Moynahan*, 7 Cir., 207 F. 2d 714, be compared with *Jennings* v. *Nester*, 7 Cir., 217 F. 2d 153, and with the opinion in the case at bar (Petition, p. 8).

Petitioners state that in the *Geach* case it was held that an unreasonable arrest, search, detention and coercion of a confession created a Civil Rights Act cause of action but that in the *Jennings* case and in the case at bar, "(similar facts)" resulted in opposite holdings.

Respondents submit that the facts in the *Geach* case are not similar to the facts in the *Nester* case and the case at bar.

In the *Geach* case, a confession was coerced from the plaintiff. In the *Nester* case no confession was coerced. In the case at bar no confession was coerced from any of the petitioners. In the case at bar, the only petitioner arrested was released without any charge being placed against him.

This court denied certiorari in the *Nesbit* case, 349 U. S. 958.

In the case at bar, petitioners charge respondents with: (1) unlawful search and seizure; (2) unjustified batteries; and (3) unjustified secret detention. These charges are not the same as the ones in the *Gracie* case and petitioners' comparison is erroneous.

Petitioners place great reliance on *Wolf* v. *Colorado*, 338 U. S. 25 (Petition, p. 8) and attempt to show that the decisions below conflict with it.

The *Wolf* case was a state criminal case in which this court held that in a state court criminal prosecution the Fourteenth Amendment does not prohibit the introduction of evidence obtained by an unreasonable search and seizure.

Petitioners have seized upon a statement made by the court in the *Wolf* case, regarding the "Due Process Clause," and attempt to base a Civil Rights Act action on such statement.

The *Wolf* case decided nothing about a Civil Rights Act cause of action and is not helpful in any way in deciding the issues in the case at bar.

Petitioners under Appendix F (Petition, p. 36) show seven Civil Rights Act cases in which this court denied certiorari.

In all seven cases, the United States Courts of Appeals held that no Civil Rights Act cause of action was shown.

The facts in those seven cases were stronger or similar to the facts in the case at bar.

Whether or not a Civil Rights Act cause of action accrues must necessarily depend on the facts in each case. The difficulty is not with the law but with its application. This is shown in *Picking* v. *Pennsylvania Railroad Co.*, 3 Cir., 151 F. 2d 240, where the court said (p. 249):

> "* * * as we read R. S. 1979 (42 U. S. C. A. sec. 1983) in the light of the *Screws* decision, [*Screws* v. *United States*, 325 U. S. 91] we are compelled to the conclusion that Congress gave a right of action sounding in tort to every individual whose federal rights were trespassed upon by an officer acting under pretense of state law. A field was created upon which a state officer could not tread without being guilty of trespass and liable in damages. *The concept is clear enough but the boundaries of the forbidden territory are ill-defined.*" (Emphasis added.)

In *Yglesias* v. *Gulfstream Park Racing Assn.*, 5 Cir., 201 F. 2d 817, certiorari denied 345 U. S. 993, an action under 42 U. S. C. A. sec. 1983, in upholding the trial court's dismissal of the complaint, the court said (p. 818):

> "Since *Snowden* v. *Hughes*, 321 U. S. 1, 11, * * * it has been said over and over again that it was not intended by the Fourteenth Amendment and the Civil Rights Acts that all matters formerly within the exclusive cognizance of the states should become matters of national concern."

Petitioners are trying to establish a federal forum for matters that belong in a state court where complete redress is available.

If petitioners were to prevail, then every false arrest, unreasonable search, and false imprisonment would become a Civil Rights Act cause of action. This court in *Snowden* v. *Hughes*, 321 U. S. 1, 11, has disclaimed such intention for the Civil Rights Act and has left the question of what is a Civil Rights Act cause of action to be determined by the facts of each particular case.

Petitioners' claim of conflict in the opinions of the federal courts of appeals is without merit. What facts constitute a Civil Rights Act cause of action can be ascertained without the addition of any further decisions. Courts will always disagree on the facts. This disagreement does not

constitute a conflict on the basic principle of law. The basic principle of law is crystallized and uniformly applied by the various courts of appeal.

II.

The Appeals Court correctly held that petitioners' complaint failed to state a cause of action under the Civil Rights Act.

Although petitioners have failed to argue the merits of their complaint, respondents will show that the complaint failed to state a cause of action under the Civil Rights Act.

The opinions of the Appeals Court and the trial court, shown in Appendix A and C (Petition, pp. 13, 16), clearly show that petitioners' complaint fails to state a cause of action under the Civil Rights Act. Respondents can only enlarge on those opinions.

Petitioners' complaint charges respondents with (1) unlawful search and seizure, (2) unjustified batteries, and (3) unjustified secret detention.

Respondents submit that none of these acts constitute a violation of the Civil Rights Act.

In *Douglas* v. *Nester*, 7 Cir., 217 F. 2d 153, certiorari denied 349 U.S. 958, the complaint charged a violation of the Civil Rights Act, sections 1983, 1985. It charged three defendants, police officers, with unlawful search of plaintiff's person, the seizure of his personal property, the introduction in evidence at a criminal trial against plaintiff of the unlawfully seized property, and the deliberate use of perjured testimony at said criminal trial. It was held that such allegations failed to state a cause of action under the Civil Rights Act.

In *Love* v. *Chandler*, 8 Cir., 124 F. 2d 785, the district

court's dismissal of a complaint which was based on 42 U. S. C. A. Section 1985 was affirmed. The complaint alleged that plaintiff was subjected to assault and battery, false imprisonment, and interference with his efforts to obtain and retain employment with the W. P. A., inflicted upon him by defendants, who were officers or agents of the United States or the State of Minnesota. In affirming the dismissal, the court pointed out that plaintiff had not been deprived of equal protection of the law, saying (p. 787):

> "The appellant does not seek redress because the State of Minnesota is discriminating against him or because its laws fail to afford him equal protection. . . . The appellant seeks damages because certain persons, as individuals, have allegedly conspired to injure him and have injured him by individual and concerted action. The wrongs allegedly suffered by the appellant are assault and battery, false imprisonment, and interference with his efforts to obtain and retain employment with the Works Progress Administration. The protection of the rights allegedly infringed and redress for the alleged wrongs are, we think, within the exclusive province of the State."

In *Miles* v. *Armstrong*, 7 Cir., 297 F. 2d 284, plaintiff alleged as a violation of the Civil Rights Act an aggravated assault on his person. In denying that this was a deprivation of federal rights, the court said (p. 287):

> "... we think that the rights of which plaintiff avers he has been denied are those which he enjoys under the laws of Illinois and which are incidental to state citizenship. The injuries he asserts he has suffered are, in essence, an aggravated assault upon his person and wanton destruction of his property—grievous injuries surely. But they do not constitute privileges and immunities incident to United States citizenship; they are rather such that the perpetrators are punishable under the state law where reparation may be obtained."

In *Lyons* v. *Weltmer*, 4 Cir., 174 F. 2d 473, plaintiff alleged that defendant, superintendent of a state hospital for the insane, improperly confined him there in violation of the Civil Rights Act. The dismissal of the action was affirmed. The court said (p. 473):

> "* * * Without attempting to define the cases in which abuse of power by a state official may justify suit in the federal courts, it is perfectly clear that the case alleged does not fall within that category. If it did, every case against a state officer for false arrest or false imprisonment would be cognizable in the federal courts. See *Screws* v. *United States*, 325 U. S. 91, 109, 65 S. Ct. 1031, 89 L. Ed. 1495, 162 A. L. R. 1330; *Bell* v. *Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939; *McCarthy* v. *West Virginia*, 4 Cir., 156 F. 2d 739; *Leo Lawsine* v. *The Glenn L. Martin Co.*, 4 Cir., 170 F. 2d 985."

In *Yglesias* v. *Gulfstream Park Racing Assn.*, 5 Cir., 201 F. 2d 817, 818, certiorari denied 345 U. S. 993, which was an action under section 1983, Civil Rights Act, the complaint alleged that defendant caused plaintiff to be falsely imprisoned for an unreasonable period of time without bond and without an opportunity to confer with counsel [the same charges being made in the suit at bar], and caused her to be put on trial on a criminal charge "by trick or fraud" without reasonable opportunity to prepare for trial, thereby depriving her of her liberty without due process of law, and of the right to have a fair trial conducted in accordance with due process of law. In upholding the trial court's dismissal of the complaint, the court held that none of the charges stated a civil rights cause of action and that (p. 818) not even malicious prosecution is a violation of the Civil Rights Act.

In *Eaton* v. *Bibb*, 7 Cir., 217 F. 2d 446, 449, certiorari denied 350 U. S. 915, the complaint alleged that the plaintiff was falsely arrested, kidnapped and falsely imprisoned by a conspiracy of peace officers. In upholding the trial

court's dismissal of the complaint, the court held no civil rights cause of action was stated.

In the case at bar, the most that the complaint shows is false arrest, assault, unreasonable search, and false imprisonment. Since these charges have been held not to be a violation of the Civil Rights Act, they cannot be the basis of action under section 1983, deprivation of due process, or section 1985, deprivation of equal protection of the law, or section 1986, failure to prevent a deprivation of equal protection of the law.

The trial court properly dismissed petitioners' case and the Appeals Court correctly affirmed the dismissal.

III.

The City of Chicago is not liable for the acts of its police under the Civil Rights Act.

If this court holds for the respondents under Point II of this brief then it will be unnecessary to decide if the City of Chicago is liable for the acts of its police officers under the Civil Rights Act. Therefore, this point is argued in the alternative.

Aside from the Illinois law on the immunity of the City of Chicago in a case of this kind, in *Cuiksa* v. *City of Mansfield*, 6 Cir., 250 F. 2d 700, it was held that municipalities are not liable for acts of their police officers under the Civil Rights Act. The court said (p. 703):

> "* * * governmental immunity exists with respect to the municipality * * * in their governmental functions, which has not been abrogated by the Civil Rights Act."

Therefore, irrespective of whether the complaint states a cause of action against the police officers [which we have proven is not true] a municipality is not liable under the Civil Rights Act.

Conclusion.

We have demonstrated that this case presents no important questions of federal law and that it is not in conflict with the decisions of this court or with those of any other federal courts of appellate jurisdiction; that the conflict contended for by petitioners arises from the factual situation in each case, and that this court has shown by consistently refusing certiorari in cases of this kind that it does not consider the question needs clarification.

Petitioners have failed to show or argue that their complaint shows a cause of action under the Civil Rights Act or that respondent City of Chicago is liable thereunder for the acts of its police.

Respondents have shown that the petitioners' complaint does not state a cause of action under the Civil Rights Act and that respondent City of Chicago is not liable under such act for the actions of its police.

Petitioners' remedy, if any, as stated by the Appeals Court (Petition, p. 16) is in the state courts.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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